

JUNERWANDA J. PAPAELIOU
MILDRED LUCILLE GULICK

IBLA 81-285

Decided November 24, 1981

Appeal from decision of the Oregon State Office, Bureau of Land Management, declaring mining claims abandoned and void. OR MC 27867 through OR MC 27876.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed evidence of assessment work performed or a notice of intention to hold the claim with the proper Bureau of Land Management office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976).

2. Evidence: Presumptions -- Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Assessment Work

The presumption that BLM officials properly discharge their duties in receiving and promptly date stamping official filings tendered them is not overcome by unsupported allegations of mining claimants that BLM lost or misprocessed their evidence of assessment work.

APPEARANCES: Junerwanda J. Papaeliou and Mildred Lucille Gulick, pro sese.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is taken from a decision dated December 24, 1980, by the Oregon State Office, Bureau of Land Management (BLM), declaring the OR MC 27867 through OR MC 27876 unpatented mining claims, listed in Appendix attached hereto, abandoned and void because no affidavit of assessment work or notice of intention to hold the claims was filed by October 22, 1979, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2.

Appellants' claims were located prior to October 22, 1976, and recorded with BLM on October 20, 1979.

The decision appealed from states in material part as follows:

Your telephone call on September 2, 1980 advised that the required affidavit had been timely filed at this office but was returned to you with documents relating to other claims. The decision of this office dated August 27, 1980 deeming these claims abandoned, was rescinded by decision dated September 3, 1980. You were allowed opportunity to provide evidence within 15 days showing an affidavit had been filed with this office by October 22, 1979.

While your letter dated October 6, 1980 states that none of the papers returned to you had a date stamp of any sort marking the date they were received by BLM, the records retained at this office show time stamping of all materials returned to you. No copy of the affidavit asserted to have been filed for these claims is included in our records and the copy you furnished to this office on September 22, 1980 does not show a time stamp proving filing of the affidavit by October 22, 1979.

* * * * *

The records further show that an affidavit of assessment work performed for the 1979-1980 assessment year was received at this office on August 25, 1980. However, the claims were previously deemed abandoned for failure to file an affidavit by October 22, 1979, and the 1980 affidavit is ineffective and rejected for this reason.

BLM's September 3, 1980, decision which rescinded its August 27 decision stated as follows:

The decision of this office dated August 27, 1980 deeming your above described mining claim abandoned and void is rescinded to provide opportunity for you to show

that an affidavit of assessment work performed was received at this office by October 22, 1979.

You called on September 2, 1980 to explain that the required affidavit was received at this office with filings for the claims but it was returned to you with two other unacceptable claim filings on January 18, 1980.

Please return the copy of the affidavit received at this office on October 20, 1979 within 15 days and keep a copy for your own records. You will be informed of the recordation action taken following receipt of the affidavit.

By letter dated September 18, 1980 (received by BLM on the 22nd), appellants advised BLM: "Enclosed are the copies of our Proof of Labor for the above claims for 1979, recorded at the county recorders office in Vale, Oregon on August 30, 1979." The enclosed proofs of labor are BLM date stamped September 22, 1980.

Appellants maintain on appeal to this Board that their "original filing was made with the Oregon State Office on October 20, 1979." ^{1/} Appellants further assert: "It is our belief that the missing document has been lost from our files in the Oregon State Office in order to eliminate all of our claims and to eliminate us as a problem to the Bureau of Land Management personnel of that office." Appellants further allege that their 1980 filings were not stamped by the Oregon State Office. In addition they point out that since January 1979 they have been involved in a civil suit which included the status of the claims at issue as part of a business inventory. Appellants' statement of reasons goes on to list some of the particulars of their dealings with the Oregon State Office concerning the law suits. Appellants feel that errors have been made and compounded by that office. In view of these assertions, the Board, by order dated August 13, 1981, granted appellants 30 days to submit substantiating evidence, including affidavits and other evidence, to show they timely made the required filings. However, no further evidence was received from appellants.

[1] The pertinent regulation, 43 CFR 3822.2-1(a), requires that owners of mining claims located prior to October 21, 1976, on Federal lands shall have filed in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recordation, whichever is earlier, evidence of annual assessment work performed or a notice of intention to hold the mining claim. This requirement is mandatory, and failure to comply therewith must result in a conclusive finding that the claims have been abandoned. G. H. Monk, 47 IBLA 213 (1980).

^{1/} The location notices for the claims at issue are BLM date stamped Oct. 20, 1979.

[2] We have closely reviewed the record before us and we find no indication that BLM timely received appellants' evidence of assessment work as appellants allege. In the absence of such evidence, BLM properly declared the claims abandoned and void. Cleatus Sypult, 53 IBLA 171 (1981); Gary L. Barton, 47 IBLA 386 (1980). In answer to appellants' contention that the Oregon State Office is at fault, we observe that there is a rebuttable presumption of regularity which supports the official acts of public officers and the proper discharge of their official duties. Frederick H. Larson v. State of Utah, 50 IBLA 382 (1980); Phillips Petroleum Co., 38 IBLA 344 (1976). This presumption may be overcome by probative evidence to the contrary. The type of evidence required was recently discussed in H. S. Rademacher, 58 IBLA 152, 156 (1981), where we stated:

This Board has found the inference of nonfiling drawn from the absence of the document from the case file to be effectively rebutted by a preponderance of the evidence in those cases where appellant's assertion that the document was timely filed is supported by substantial corroborating evidence. Bruce L. Baker, * * * [55 IBLA 55 (1981)]; L. E. Garrison, * * * [52 IBLA 131 (1981)]. In Bruce L. Baker, *supra*, the assertion that the document in issue was actually filed was supported by an affidavit setting forth in detailed chronological sequence the events surrounding the filing which affidavit in turn was corroborated by the dates of notarial seals and filing with the county recorder's office. In the L. E. Garrison case, *supra*, claimant's assertion that the document in issue had been filed with BLM was corroborated by an affidavit of a subsequent telephone conversation with a BLM employee who opened the mailing and acknowledged timely receipt of the required document. The phone conversation was in turn documented by a long-distance telephone bill reflecting the call. On the other hand, the Board has held that uncorroborated statements, even where placed in affidavit form, to the effect that a document was filed are not sufficient to overcome the inference of nonfiling drawn from the absence of the document from the file and the practice of BLM officials to handle properly filings of legally operative documents.

Such evidence has not been submitted on appeal even though appellants were invited to do so by the Board's order. Appellants' suggestion that the Oregon State Office lost or misprocessed their filings is not sufficient to overcome the presumption of regularity, especially in view of the fact that appellants were afforded an opportunity to show they had made the required filing after BLM rescinded its first decision voiding the claims and they submitted no such evidence. Thus, there is no indication in the record before us to substantiate appellants' contention that they were being unfairly treated by BLM. Moreover, a review of the file shows that appellants' 1980 filings were, in fact, date stamped by BLM. We conclude that nothing has been shown

to cast doubt upon the presumption that BLM officially promptly date stamped all filings submitted to them. See Henry D. Friedman, 49 IBLA 97 (1980).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Douglas E. Henriques
Administrative Judge

APPENDIX

<u>BLM Serial</u> <u>Number</u>	<u>Name</u>	<u>Date of</u> <u>Location</u>	<u>Recorded with</u> <u>BLM</u>
OR MC 27867	The William Tell	Sept. 22, 1976	Oct. 20, 1979
OR MC 27868	Rod Hill	Sept. 22, 1976	Oct. 20, 1979
OR MC 27869	State Line	Sept. 22, 1976	Oct. 20, 1979
OR MC 27870	Little Creek	Sept. 22, 1976	Oct. 20, 1979
OR MC 27871	The Baby Doe	Sept. 22, 1976	Oct. 20, 1979
OR MC 27872	Serena Green	Sept. 22, 1976	Oct. 20, 1979
OR MC 27873	Carnival	Sept. 22, 1976	Oct. 20, 1979
OR MC 27874	Humboldt Lilac	Sept. 20, 1976	Oct. 20, 1979
OR MC 27875	Gray Green #1	Oct. 1, 1974	Oct. 20, 1979
OR MC 27876	Big Creek #1	Sept. 20, 1976	Oct. 20, 1979

